

RESPONSE TO OFFICE ACTION**A. Status of the Claims**

Claims 64-70 were pending at the time of the Office Action and are presented herein for reconsideration. Claims 64 and 69 have been amended. Support for the amendment to claim 64 can be found, at least, in the paragraph beginning at page 9, line 10. Support for the amendment to claim 69 can be found, at least, in the paragraph bridging pages 76-77.

B. Claim Objections

The Action objects to claim 69 as being of improper dependent form under 37 C.F.R. § 1.75(c) for failing to limit the subject matter of the previous claim. In response, Applicants note that the claim 69 has been amended to clarify that it is directed a transgenic plant regenerated from a transgenic cell, as opposed to a plant that inherited the gamma coixin promoter referred to in claim 64 from a progenitor, for example, such as by growing a seed of a parent plant that contains the promoter sequence. The objection is therefore believed moot and removal thereof is thus respectfully requested.

C. Objection to the Specification

(1) The Action objects to the title as not descriptive. In response, Applicants note that a new title has been inserted by amendment. The objection is therefore believed moot and removal thereof is thus respectfully requested.

(2) The Action objects to the abstract as not commensurate with the currently claimed invention and requires correction. In response, Applicants note that a new abstract has been

submitted herein by specification amendment. The objection is therefore believed moot and removal thereof is thus respectfully requested.

D. Rejection Under 35 U.S.C. § 101

The Action rejects claim 68 under 35 U.S.C. § 101 as directed to non-statutory subject matter. In particular, the Action asserts that claim 68 is drawn to a progeny of any generation of a plant comprising the isolated gamma coixin promoter of claim 64, but is not limited to progeny comprising the promoter and thus, due to Mendelian inheritance, could read on non-transgenic products of nature. In response, Applicants note that claim 68 is directed to “The fertile **transgenic plant of claim 67**, further defined as a progeny plant of any generation of a plant comprising said isolated gamma coixin promoter” (emphasis added). As indicated in the bolded portion, the claim is directed to the fertile transgenic plant of claim 67, but further defines the plant as a progeny plant. The claim therefore incorporates the limitations of claim 67, *e.g.*, is directed to a fertile transgenic plant transformed with the isolated gamma coixin promoter as defined in claim 67. The claim therefore does not read on non-transgenic progeny because it requires the isolated gamma coixin promoter. It is therefore believed that the rejection is moot and removal of the rejection is thus respectfully requested.

E. Rejection Under 35 U.S.C. § 102

The Action rejects the claims under 35 U.S.C. § 102 as being anticipated by Freitas *et al.* (*Mol. Gen. Genet.* 1994, October 28; 245(2):177-186), *e.g.*, the sequence in Genbank Accession X62480. Specifically, it is stated that the claims are drawn to gamma coixin promoters wherein the promoters comprise a fragment of SEQ ID NO:8 having promoter activity and further that

Freitas *et al.* teach an isolated gamma kafirin promoter wherein the promoter comprises a fragment of the nucleic acid sequence of SEQ ID NO:8 having promoter activity. It is thus stated that, while Freitas *et al.* do not teach that the gamma kafirin promoter is a gamma coixin promoter, the current claims are not structurally distinct from the Freitas *et al.* sequence.

In response, Applicants note as shown in the alignment attached to the Office Action and in Exhibit A, that the sequence recited by Freitas *et al.* is distinct from SEQ ID NO:8 and the claims. For example, a review of the alignment between the sequences reveals no more than 30 consecutive matching nucleotides at any given portion. See Exhibit A. In contrast, the current claims recite at least 80 nucleotides of SEQ ID NO:8. The cited reference therefore fails to teach all elements of the claims and cannot anticipate the claimed invention. Removal of the rejection is thus respectfully requested.

F. Non-Statutory Double Patenting Rejection

The Action rejects claims 64-70 under the judicially created doctrine of obviousness-type double patenting over claims 1-15 of U.S. Patent No. 6,635,806. In response, Applicants note that a Terminal Disclaimer over this patent will be submitted upon an indication that the claims are otherwise allowable. The rejection is therefore now believed moot and removal thereof is thus respectfully requested.

G. Conclusion

In light of the foregoing, applicants submit that all claims are in condition for allowance, and an early indication to that effect is earnestly solicited.

The Examiner is invited to contact the undersigned attorney at (512) 536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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